Supreme Court, U.S.
FILED
95-245 JUL 27 1995
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, Husband and Wife,
Petitioners,

v.

SANDY WHITTON, TRESA McDONALD, MIKE McMILLAN, LYNN UNDERWOOD, JIM NAKAGAWA, MEL MULHOLLAND, DALLAS DEWEY, CHARLES BALZER, CITY OF APACHE JUNCTION, ARIZONA BUILDING DEPARTMENT, CITY OF APACHE JUNCTION, A MUNICIPAL CORPORATION OF THE STATE OF ARIZONA, Jointly and Severally as Individuals,
Respondents.

Petition for a Writ of Certiorari to the
Arizona Court of Appeals
Division Two

PETITION FOR A WRIT OF CERTIORARI

ROBERT L. CAMBONI
SHIRLEY C. CAMBONI
1509 W. Saddle Butte
Apache Junction, Arizona 85220
(602) 983-0163
PRO SE

QUESTIONS PRESENTED

1. Whether the Arizona Court of Appeals Division 2, erred by allowing a warrantless administrative search and seizure of Petitioners' building and property, pursuant to the Fourth Amendment and City of Apache Junction's Ordinance Number 806, pursuant to the warrant requirement of the Uniform Building Code 1991 Edition, the Uniform Abatement of a Dangerous Building 1991 Edition and the 1990 Edition Electric Code?

2. Whether the Arizona Court of Appeals, Division 2, erred by allowing the taking of Petitioners' building and property by the City of Apache Junction, pursuant to the Fifth and Fourteenth Amendments and by an ex post facto City of Apache Junction Ordinance Number 806 and pursuant to the United States Constitution, Article 1 § 9(3) and Article 1 § 10(1)?

3. Whether the Arizona Court of Appeals erred by allowing Fraud Upon the Court regarding the March 2, 1993 Partial Summary Judgment?

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JURISDICTION

1. By Memorandum Decision not for publication the Arizona Court of Appeals, Division Two, dated July 29, 1994 affirmed the decision of the Pinal County Superior Court.

2. Motion for Reconsideration Denied August 17, 1994

3. The Supreme Court of Arizona denied Petition for Review dated May 5, 1995.

4. The Jurisdiction of this Court is envoked under 28 U.S.C. § 1257(a):

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

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STATEMENT I

The question presented is whether the Fourth Amendment prohibits a warrantless adminstrative search and seizure of Petitioners' building and property, by the City of Apache Junction on February 12, 1992?

Petitioner was simply doing maintenance to his commercial building's leaking roof. Inspector Tresa McDonald drove a City truck onto the rear of Petitioners' property and asked what was being done. Petitioner told her he was doing maintenance on his leaking roof. McDonald stated a permit was required for the maintenance and handed a stop work order to Petitioner. She also had a complaint of major remodeling and wrote in the address of Petitioners' property on the complaint at that time. See Superior Court, Docket 91, Exhibit X1A. Petitioner stopped doing his maintenance and immediately went for permit. See Superior Court Docket 36, Exhibit 10, Page 3, Paragraph 3. However, Page 3 was left out by Tresa McDonald and is missing from Superior Court Docket 36, Exhibit 10.

Petitioner completed permit application but was never given a copy. See Superior Court Docket 36, Exhibit 3, permit application which has been altered at number 9 by hand writing that is not Petitioners.

Sandy Whitton inquired about cost of the maintenance. Petitioner stated

one hundred twenty dollars. Twelve rolls of roofing material at ten dollars each. Whitton told Plans examiner/inspector, Mike McMillan she did not believe the repair could be done for one hundred twenty dollars and for him to go to Petitioners' property and check as to the one hundred twenty dollar cost, Superior Court Docket 36, Exhibit 10, Page 31. Later on February 12, 1992, McMillan, accompained by McDonald, came to check the one hundred twenty dollar cost of Petitioners' roof maintenance. This was the sole purpose for the visit, not an inspection. Both Inspectors immediately got onto Petitioners' roof, and stated the roof structure did not meet the 1991 Uniform Building Code. Petitioner stated that could be true as the building was built in 1977, before either the City or the 1991 Code existed. Both Inspectors stated it did not matter when it was built, it did not meet the 1991 U.B.C. specifications and therefore was unsafe. McMillian and McDonald then got into the electric service entrance box on the west side of Petitioners' building. The metal box was closed weather-tight and the main breaker was in the off position, Superior Court Docket 36, Exhibit 10, Page 80. McMillan then told petitioner to unlock the door and let them into the building. Petititoner protested as this had no bearing on the original intent of the visit. McMillan told Petitioner he must let them into the building. Under protest Petitioner let them in. They had neither an inspection warrant or Petitioners' consent permission.

Petitioner, under duress, let them into the building.

McMillan and McDonald would not let Petitioner finish the maintenance to his roof, with approximately 100 Square feet of plywood uncovered, even though it had been raining and more rain was forecast. After instructing Petitioner to call their boss, Lynn Underwood for his decision at 8:00 A.M. on February 13, 1992 they departed.

Approximately ninety minutes later on February 12, 1992, Petitioner returned to his property and caught McDonald and Building Official Lynn Underwood trespassing and searching and seizing his building and property, without permission or an inspection warrant. They had crawled through an eight inch opening between the gates of a six foot high chain link fence that was chained and locked. Underwood told Petitioner he had to let them in the building. Petitioner, once again under duress, let them into the building. Underwood and McDonald had already been on the roof and into the electric service box before Petitioner caught them on the property. Underwood and McDonald stated they could condemn Petitioners' building. At this time Petitioner motioned them off the property. They left.

STATEMENT II

Whether the Arizona Court of Appeals, Division Two erred by allowing

the taking of Petitioners' building and property for now over forty months, in violation of the Fifth and Fourteenth Amendment, and by applying an ex post facto law.

On March 25, 1992 the City of Apache Jct. attached an Official Notice and Order, pursuant to their Uniform Code for the Abatement of Dangerous Buildings, 1991 Edition, Ordinance #806. The City of Apache Junction deemed the building unsafe because it did not meet the Uniform Building Code, 1991 Edition, Ordinance # 806. Which is an expost facto ordinance and in violation of Article 1, § 9(3) and Article 1, § 10(1) of the United States Constitution.

Petitioners' building was constructed with all lawfully required permits under the authority of Pinal County, Arizona, in the years 1977, 1978 and 1979, before the City of Apache Junction existed, and before the City took authority from Pinal County on July 1, 1979, Superior Court Docket 24, Exhibit X5.

The above stated is verified by the City of Apache Junction's hearing transcript of the Construction Code Board of Appeals on June 10, 1992, Superior Court Docket 36, Exhibit 10, and the Finding of Facts and Decision, Superior Court Docket 36, Exhibit 15. No C.C.B.O.A. member has ever viewed Petitioners' building by warrant or otherwise. Finding of Facts, Page 4, Paragraph 8.

Petitioners filed suit in the Superior Court of Arizona on August 18, 1992, Docket 1. Which stated Civil Complaint CIV 40646, as follows: Page 5 and 6, letter D,

> They violated The Fourth Amendment of the Constitution of the United States while illegally seizing and entering the property of the Plaintiffs without permission or a legal warrant to enter.

Also at page 9, count III. Which states:

> Illegal search and seizure violation of the Fourth Amendment rights of Plaintiffs.

The Fourteenth Amendment, page 6, letter I which states:

> They have damaged the property value of his building by falsely and fraudulently posting the property as closed for being unsafe.

page 6, letter J, which states:

> They have violated the Fourteenth Amendment rights of the Plaintiffs by keeping them from having due process of law.

Also page 7, letter Q:

> They have conspired to condemn and take away the property from private citizens without cause...

The ex post facto was mentioned in this way on page 4, number 10, which states:

> The building was built in 1977 before the City was actually a municipality.

The expost facto was also stated by Petitioner Mr. Camboni on June 10, 1992, before filing suit. See the Construction Code Board of Appeal's transcript, Superior Court Docket 36, Exhibit 10, Page 53.

> Mr. Camboni speaking: "Can I put in one more perspective? I've tried this on the City but I don't think it worked. If I was convicted in 1987 for murder and there wasn't a death penalty, and they passed a law in 1991 that now there is a death penalty, do you think they should have the right to come to my cell and tell me to pack up and move me to death row when I was tried under a different circumstance? That's the same thing they're doing here with my building".

Petitioners' State Appellate Court Opening Brief stated illegal search and seizure, Fourth Amendment, page 11 and referred to Superior Court Dockets 82, which contains Fourth Amendment cases, and pages 12 and 13, which referred to Superior Court, Docket 81 which contains retroactive cases and Appeals Court Motion for Reconsideration, dated August 9, 1994, page 7, whereby the Fourth,

Fifth and Fourteenth Amendment rights were voiced.

STATEMENT III

The Partial Summary Judgment of March 2, 1993 not only was perpetrated on Petitioner by the above, it was accomplished by Fraud Upon the Court. City Attorney Glenn Gimbut told the Court that photos introduced at the C.C.B.O.A. hearing showed a beam was sagging on Petitioners' building.

REASONS FOR GRANTING THE PETITION

On February 12, 1992, upon a visit from building inspector McDonald informing Petitioner he needed a permit to do maintenance repair to his leaking roof on his commercial building, Petitioner filled out and signed a permit application.

The one hundred twenty dollar cost for the repair was not believed by Whitton. She sent McMillan to ascertain the truth of the one hundred twenty dollar repair cost. This was the only reason for the visit to Petitioners' property. C.C.B.O.A. transcript, Superior Court Docket 36, Exhibit 10, Page 31, Paragraphs 1 thru 6.

McDonald accompanied McMillan to Petitioners' property. McMillan and McDonald climbed on the building roof. They also opened the closed electric entrance box on outside of building. McMillan then told Petitioner he had to

let them into the building. Under protest, they were let into building, without an administrative search warrant or constent permission.

McMillan and McDonald told petitioner his roof was unsafe because it did not meet the 1991 Apache Junction City Code and would not let Petitioner finish the repair of his roof. They then left. The Petitioner also left.

The Supreme Court of Arizona denied Petition for Review and the Appeals Court, State of Arizona, Division Two, Affirmed the Superior Court's judgments, and conflicts with this Court's decision.

> ...The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commerical property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by warrant. Norman See, Appelant, v. City of Seattle. 387 U.S. 541, 87 S.Ct. 1737. At page 1739. (1967).

This Court further stated:

> In our opinion, these arguments unduly discount the purposes behind

the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate without any reassessment of the basic agency decision to canvass an area. Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. Camara v. Municipal Court 87 S.Ct.1727. At page 1733, (1967).

Approximately ninety minutes later upon returning to his property,

Petitioner physically caught Building Offical, Lynn Underwood and Inspector, McDonald on his property. They had gained entry through a locked fence. See C.C.B.O.A. Transcript's missing Pages 3 and 4. These two pages were purposely left out of Superior Court Docket 36, Exhibit 10, because page 3 contains the proof of the reason Petitioners' building was deemed unsafe and makes the Offical Notice and Order untrue. The last paragraph on page 3 states:

> Tresa McDonald speaking: We also talked about the rafters, specifically the span of the rafters and the spacing of the rafters on his roof. and at that time Mike and I came to the conclusion and we felt that the roof itself had some structural problems in regards to the size of the rafters that were used and the spacing of them, and how far that they spanned from bearing point to bearing point.

Page 4 confirms the illegal search and seizure. Paragraph 1, Page 4 states:

> We told him what we would like to do is have our supervisor, the building official, make an evaluation of the building and determine whether that building was structurally unsound or not. At this time there wasn't a question on the electrical because we all agreed that there were some problems so later that day Mr. Underwood and myself again returned to the property in hopes to find Mr.

Camboni there a third time. However he wasn't, and so we did go through the gate. We did not enter the building, but did enter onto the property and was looking at the outside of the building when Mr. Camboni appeared. He wasn't very happy with us because we were on his property. and we explained to him that we were there to try to evaluate the structure and the situation.

Also see Apache Junction Police Report, Superior Court Docket 110, Exhibit P-5, Page 5, which states:

At approximately 1510 hours, Ms. McDonald returned with her supervisor, Lynn Underwood. They parked in front of 1458 E. 18th. Ave. They did not see Mr. Camboni, but she thought he was probably around back as he had been on the prior contacts. The front gates were chain link and were secured to each other with a length of chain and a padlock. There was a gap between the two gates. They squeezed through this gap and were going to walk to the back of the property to look for Mr. Camboni. As they were walking across the lot, Mr. Camboni drove up. He asked them how they got in. She told him they had crawled through the front gate.

See Superior Court Docket 82, Exhibit X2004, notorized statement of Scott Wicoff, eyewitness to the trespass

and search and seizure, Paragraph 3 and 4, which states:

> There were two persons, one female and one male, walking around the property. The woman was at the eastern side of the building heading toward the front of the building, out of my view. The man was in the back of the property, then proceeded to the back door of the building but did not gain entry. He then walked to the west side of the building toward the SRP power box.
>
> I then went to the front of our building to see if Mr. Camboni was there and did not see his vehicle but did see a small white truck which was parked in front of his entry gates, which were still locked.

Affidavit of Tresa McDonald, Docket 36, Exhibit I, Number 6, states:

> #6. Exhibit 10 is a true copy of the transcript of a hearing conducted on June 10, 1992 before the City of Apache Junction Construction Code Board of Appeals. This transcript was prepared from a tape recording of said meeting and was prepared by a court reporting firm. Affiant has personally listened to the tape of the meeting and has compared it to the transcript. The transcript is an accurate transcription of the hearing and evidence presented before the Apache Junction Code

Board of Appeals on June 10, 1992.

This is not true, see Superior Court Docket 36, Exhibit 10, with Pages 3 and 4 missing. These two missing pages were submitted to Appeals Court Opening Brief, Appendix I and II, March 21, 1994. Page 4 was submitted to Superior Court, Docket 82, Exhibit 10. Pages 3 and 4 were also mentioned in Superior Court Docket 62, Page 2, which stated by Petitioners' then Attorney:

> "In fact, even that transcript is missing pages number three and four, in the copy provided to the Plaintiffs".

Petitioners also informed the Superior Court of the missing pages 3 & 4 in Docket 124, Page 4.

The City of Apache Junction apparently forgot Petitioners had purchased a draft copy from McDonald and presumed Petitioners wouldn't notice the two missing pages.

Both Underwood and McDonald had been on the roof and into the electric service entrance box. Finding of Facts, Page 6, Paragraph 11. Underwood was never on the roof in the presence of Petitioner. Underwood told Petitioner he had to let them in the building. The only thing they found was a lawfully built building. Nothing was identified pertaining to § 302.3, 302.8, 302.9 and 302.16, as referenced in the Official Notice and Order, Superior Court Docket

36, Exhibit 4. This is a further conflict with this Court.

> It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive. Camara v. Municipal Court 87 S.Ct. 1727. At page 1733. (1967).

This Court also stated:

> In summary, we hold that administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual, and that the reasons put forth in Frank v. State of Maryland and in other cases for upholding these warrantless searches are insufficient to justify so substantial a weakening of the Fourth Amendment's protections. Because of the nature of the municipal programs under consideration, however these conclusions must be the beginning, not the end, of our inquiry. The Frank majority gave recognition to the unique character of these

inspection programs by refusing to require search warrants; to reject that dispostition does not justify ignoring the question whether some other accommodation between public need and individual rights is essential. Camara v. Municipal Court 87 S.Ct. 1727. At page 1733 (1967).

Petitioner was not operating a business of any kind on February 12, 1992, let alone a regulated business.

The Appeals Court of the State of Arizona is also in conflict with U.S. v. Seslar 996 F.2d 1058. At page 1061. (10th. Cir. 1993). Which stated:

> ...In contrast, a regulatory search is justified if the state's interest in ensuring that a class of regulated persons is obeying the law outweighs the intrusiveness of a program of searches or seizures of those persons. The origins of the regulatory search doctrine are traced to Camara v. Municipal Court, 387 U.S.523, 87 S.Ct. 1727, 18 L.Ed. 2d 930, (1967)

U.S. v. Seslar 996 F.2d. 1058, at page 1061, also stated:

> ...The Court recently summarized the closely regulated industry line of cases by articulating a three-part test for determining whether a warrant is required for a regulatory search:

First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made.

Second, the warrantless inspections must be "necessary to further the regulatory scheme"....

Finally, "the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. New York v. Burger, 482 U.S. 691, 702-03, 107 S.Ct.2636, 2644, 96 L.Ed.2d 601 (1987) (quoting Donovan v. Dewey, 452 U.S. 594, 600, 602, 603, 101 S.Ct. 2534, 2540, 69 L.Ed.2d 262 (1981) (citations omitted); see also S & S Pawn Shop, Inc. v. City of Del City, 947 F.2d 432, 436 (10th Cir. 1991); V-1 Oil Co. V. Wyoming, 902 F.2d 1482, 1485-86 (10th Cir.), cert. denied, 498 U.S. 920. 111 S.Ct.295. 112 L.Ed.2d 249 (1990). To satisfy the third part of the test, the statute must perform two functions; (1) "it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope"; and (2) "it must limit the discretion of the inspecting officers." Burger, 482 U.S. at 703, 107 S.Ct. at 2644.

Before applying this test, however, the court must determine whether the industry involved is in fact a

"closely regulated" one. See id. at 699-702, 107 S.Ct, at 2642-44. This initial determination is important because the justification for permitting warrantless searches is that persons doing business in closely regulated industries have a significantly reduced expectation of privacy. See Id. at 702, 107 S.Ct. at 2643-44.

There was no substantial government interest.

The above is a violation of the Fourth Amendment:

> Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

Further, the Inspectors also violated the City of Apache Junction's Right of Entry pursuant to the following: The Uniform Building Code, 1991 Edition, Superior Court Docket 36, Exhibit 16, Letter C, page 5, the Uniform Code for the Abatement of Dangerous Buildings, 1991 Edition, Superior Court Docket 36, Exhibit 18, Page 2, Letter C, and the National Electric Code. 1990 Edition, Superior

Court Docket 36, Exhibit 17, Page 4, Letter C.

Further reasons why this Court should Grant Certiorari. This Court stated:

> Civil litigant may seek review in the United States Supreme Court of any federal claim properly asserted in and rejected by state courts. Huffman v. Pursue, Ltd., 95 S.Ct. 1200, 420 U.S. 592, 43 L.Ed.2d 482, rehearing denied 95 S.Ct. 1969, 421 U.S. 971, 44 L.Ed.2d 463, (1975).

This Court also stated:

> Where final decision of state court has sustained validity of a state statute challenged on federal constitutional grounds, an appeal to the United States Supreme Court lies as a matter of right. 28 U.S.C.A. § 1257(1). Huffman v. Pursue, Ltd., 95 S.Ct. 1200, 420 U.S. 592, 43 L.Ed.2d 482, rehearing denied. 95 S.Ct. 1969, 421 U.S. 971, 44 L.Ed.2d 463, (1975).

City of Apache Junction's own Civil Engineer, Gordon Grandy, by affidavit, Docket 36, Exhibit 11, with page 4, math computation states: "OK" which totally conflicts with § 302, contained in the Official Notice and Order, Superior Court Docket 36, Exhibit 4. Affidavit of Gordon Grandy with Page 3, letter A and B, Superior Court Docket 36, Exhibit 11, with page 3, states:

A. The stress imparted to the rafters due to just the roof alone is 469 psi. Codes allow up to 1450 psi, so the roof is not in eminent danger of collapsing under its own weight.

B. The stress imparted to the rafters when and if the live load of 20 lbs. per square foot is applied, exceeds the 1450 psi, and exceed an adjustment factor for short term loads. Therefore, the roof could collapse if some type of rain storm or unseasonable snow fall were to happen that duplicate a weight of 20 lbs. per sq. ft.

The 20 lbs. per sq. ft. is equivalent to 40 inches of snow. At the 1700 feet level in the Arizona desert, 40 miles east of Phoenix, Az. this has not and could never happen and certainly would not fall only on Petitioners' building. The roof has a two foot drop in sixteen feet and sheds rain effectively.

In fact the 1991 U.B.C shows that exactly what Petitioner was doing to his leaking roof was permitted by the 1991 U.B.C. on page 2, Superior Court Docket 36, Exhibit 16, which states:

Alterations or repairs to an existing building or structure which are nonstructural and do not adversely affect any structural member or any part of the building or structure having required fire

> resistance may be made with the same materials of which the building or structure is constructed. The installation or replacement of glass shall be as required for new installations.

This was also stated to the C.C.B.O.A, Superior Court Docket 36, Exhibit 10, Page 23, Paragraph 10.

Petitioner was removing each old roll of roofing and replacing it with a new roll of roofing of exactly the same material used in the original construction. In fact, Superior Court Docket 36, Exhibit 16, page 10 of the 1991 U.B.C. Section 302, does not mention valuation for repairs.

Further still, Petitioners' property has been taken since February 12, 1992, the electric and water severed on March 11, 1993, and posted as Dangerous, which conflicts with the Fifth and Fourteenth Amendments, as well as the Arizona State Constitution, Article 2 § 17, as follows:

> Fifth Amendment: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall

be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Arizona State Constitution, Article 2. § 17. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, paid into court for the owner, secured by bond as may be fixed by the court, or paid into the State treasury for the owner on such terms and conditions as the Legislature

may provide, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Word "taking" when used in constitutions or statutes in regard to property, and particularly realty, prohibiting taking of private property without compensation, includes permanent taking or diminishing of any of rights which one has by reason of ownership as well as deprivation of title to physical object. In re Forsstrom (1934) 44 Ariz. 472, 38 P. 2d 878.

The Petitioners are not permitted to occupy their own building. They must sit and watch their property depreciate and disintegrate before their eyes. The property is left with no benefit.

Petitioners are allowed only to continue to pay property taxes on a building they are not allowed to use. Petitioners cannot put protest slogans on their building without criminal charges being filed by the City of Apache Junction for no sign permit for the slogans, due to the above and below stated:

This is paramount to permanent invasion:

> We have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulation that compel the property owner to suffer a physical "invasion" of his property. In general (at least with regard to permanent invasions), no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we required compensation. Lucas v. South Carolina Coastal Council 112 S.Ct. 2886 (1992).

> We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking. Lucas v. South Carolina Coastal Council. 112 S.Ct. 2886 (1992).

This is exactly the dilemma faced by Petitioners.

> ...affirmatively supported a compensation requirement, is the fact that regulations that leave the owner of land without economically beneficial or productive options for its use-typically, as here, by requiring land to be left substantially in its natural state-carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm. Id.

Further reasons why this Court should Grant Certiorari. The City of Apache Junction applied their 1990 and 1991 Codes under Ordinance #806 back to 1977 before the City existed, which creates an ex post facto law. The Official Notice and Order stated in part:

> Any such person who fails to comply with this order is guilty of a class two misdemeanor.

The Notice and Order falls under City of Apache Junction Article 7-2 penalties, which States:

> Article 7-2: Any person, firm or corporation, whether as principal, owner, agent, tenant, employee or otherwise, who violates any provision of this chapter or of the codes adopted herein; or fails to

> comply with any order or regulation made hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed twenty-five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

There were no building codes to follow when Petitioners' building was built under Pinal County authority, Superior Court Docket 24, Exhibit X5, also Superior Court Docket 81, Exhibit X913. And Superior Court Docket 24, Exhibit X702, Land development code, Page 36, Paragraph B. Therefore the above Article 7-2 would not only be retroactive application of the 1991 U.B.C. but void on its face as ex post facto.

Arizona Constitution, Article 2 § 25 states:

> No bill of attainder, ex-post facto law, or law impairing the obligation of a contract, shall ever be enacted.

The following Appellate Court stated:

> An "ex-post facto law" is a statute of a criminal nature which punishes acts that took place prior to its enactment. U.S.C.A. Const. art. 1. §

10. cl.1. The term "ex-post facto" necessarily implies a fact or act done after which the law in question is passed. Whether it is ex-post facto or not relates, in criminal cases, to which alone the phrase applies to the time at which the offense charged was committed. If the law complained of was passed before the commission of the act with which the prisoner is charged, it cannot, as to that offense, be an ex-post facto law. If passed after the commission of the offense, it is as to that ex-post facto though whether of the class forbidden by the Constitution may depend on other matters. But, so far as this depends on the time of its enactment, it has reference solely to the date at which the offense was committed to which the new law is sought to be applied. No other time or transaction but this has been in any adjudged case held to govern its ex-post facto character. Leon v. Torruella, C.C.A. Puerto Rico, 99 F.2d 851. At page 854.

Leon v. Torruella conflicts with the Arizona Court of Appeals, Division Two as does the following:

Law violates ex post facto clause if it is penal or criminal, and imposes punishment for act which was not punishable at time it was committed, or imposes additional punishment to that then prescribed. U.S.C.A. Const. Art. 1 § 10 cl. 1- Conlog v.

Shinbaum, 949 F.2d 378, rehearing denied 958 F.2d 1081, certiorari denied 113 S.Ct. 123, 121 L.Ed.2d 79.

United States Constitution, Article 1, § 9, (3). No bill of attainder or ex post facto law shall be passed.

United States Constitution, Article 1, § 10, (1). No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

However, the Appeals Court of Arizona stated: We are unable to glean from the record any basis for our intervention in these proceedings. Appendix B-1.

The Appeals Court would not permit Petitioner to submit the Public and Secret Tapes that contain the true facts. Although transcripts and partial transcripts of these tapes are in the Superior Court Records. These tapes have been submitted to Federal District Court CIV 93-1310 PHX RCB. The Superior Court and Appeals Court held Petitioners to the same standards as an attorney and also took advantage of their lack of procedural knowledge.

On the citing of one case, Watanabe v. City of Phoenix, 140 Arz. 2575 683 P2d 1177. App. 1984. Deemed Appeal frivolous with Attorney fees. Appendix B-1. Then Denied Petitioners' Motion for Reconsideration, Then deemed Appeal not frivolous due to underlying issue, and Sua Sponte Denied Attorney fees. The Watanabe cite pertained to all property and did not just single out Watanabe as in Petitioners' case. If the 1991 U.B.C. were applied to all structures in Apache Junction, as in the Watanabe case, approximately 90% of these structures would fail to meet the 1991 U.B.C. and would have to be demolished.

Finally, further reasons why the Writ of Certiorari should be granted. City Attorney Glenn Gimbut, by Statement of Facts in Support of Motion for Partial Summary Judgment on Counterclaim, Docket 36, Page 8, Number 24, states:

> Photographs introduced at the hearing of June 10, 1992 showed at least one beam on the subject building was sagging. See transcript page 64.

The photos mentioned on page 64, were actually photos of a frame support demonstration built by Petitioner and brought to the C.C.B.O.A. hearing on June 10, 1992. These were not photos of Petitioners building as Gimbut fraudulently told the Court.

Petitioners filed a 60 C Motion

Arizona Rules of Civil Procedure for Fraud Upon the Court, Docket 82, Page 9, and was denied by Mintue Entry, Docket 92, dated August 13, 1993.

> An attorney's loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court, and, when he departs from that standard he perpetrates a "fraud upon the court" within savings clause of rule governing relief from judgment or order, Id. Kupferman v. Consolidated Research & Mfg. Corp., C.A.N.Y., 459 F.2d 1072, 1078. 1080.

28 U.S.C. § 2403(a) may be applicable and Petitioners respectfully ask this Court to invite the Solicitor General to express the views of the United States on the merits of the petition.

What a price for Petitioners to pay for repairing their building's leaking roof, which brought about the following. Apache Junction City Attorney, Glenn Gimbut, is perpetually and brutally harassing Petitioners for standing up for their United States Constitutional rights. On December 14, 1992 in a lettr to Petitioners' then Attorney Fred Taylor, Gimbut threatened criminal charges against Petitioners for protesting on City property, Appendix I-1. Gimbut made good on his threat on October 13, 1993 and caused the City to file criminal charges for no sign permit due to protest slogans on Petitioners'

building. Apache Junction Municipal Court filed on October 13, 1993, No. 93 CR888, 889, 890, 891. Petitioners then filed a 42 U.S.C. 1983 action CIV 93-2086, filed October 28, 1993, First Amended on October 29, 1993. Amended a second time on April 20, 1994. Now pending in Ninth Circuit, NO. 95-15027, fully briefed. Pursuant to First, Sixth, Thirteenth, and Fourteenth Amendments. The Municipal Court charges were finally dismissed with prejudice at full trial dated March 31, 1994. No. 94 CR920/94 CR934. Glenn Gimbut then hired a special prosecutor to file the same charges against Petitioners on August 23, 1994. No. 94 CR920/94 CR934. Petitioners filed for removal to Federal District Court on September 13, 1994, CR 94-283 PHX SMM. The case was remanded back to City of Apache Junction Municipal Court, filed on September 21, 1994. Motion for Reconsideration was struck for improperly being filed dated October 5, 1994. The City of Apache Junction Municipal Court proceeded with criminal trial NO. 94 CR920/94 CR934, on January 6, 1995 and Petitioners were found guilty. Petitioners were sentenced on January 30, 1995, fined over five thousand dollars each, six months in jail, two years probation and given 30 days to remove protest slogans from Petitioners' property. Petitioners appeal was filed Superior Court Appellate, No. CR 95020189, dated February 8, 1995, The Superior Court Appellate affirmed, dated June 13, 1995. Petitioners have appealed to Arizona Appeals Court, Division Two, where there

is no doubt, certiorari will have to be sought again from this Court. Even Petitioners' Stay of Mandate for this present Cause was Denied, filed June 23, 1995,Appendix G-1. The Order (Mandate) was filed June 27, 1995. Appendix H-1

What more must be said by Petitioners, who have spent everyday of their lives since February 12, 1992 to date, fighting for their United States Constitutional rights. Including a 42 U.S.C. § 1983 for Fourth and Fourteenth Amendments, filed July 7, 1993, CIV 93-1310 PHX RCB, now pending in the Ninth Circuit NO. 94-16979 fully briefed. The above is also a violation of 18 U.S.C. 242, which states:

> Word "inhabitant" as used in statute imposing criminal sanctions on "whoever, under color of any law, statute, ordinance, regulation, or custom," deprives any "inhabitant" of any state, territory or district of his or her civil rights includes all persons present within United States jurisdiction. 18 U.S.C.A. § 242. U.S. v Otherson, 637 F.2d 1276, certioari denied. 102 S.Ct. 149, 454 U.S. 840, 70 L.Ed.2d 123.

CONCLUSION

Petitioners have consistently moved forward with blind faith that the Constitution means what it says. Petitioners, in case their petition is somewhat inartfully drawn, will call attention to this Court's following

ruling. This Court stated in Haines v. Kerner 92 S.Ct. 594 (1972):

> ...allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunty to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.ed.2d 80 (1957). See Dioguardi v. Durning, 139 F.2d 774 (Ca.2 1944).

This Court also stated:

> We first observe that pro se complaints and supporting documents of the type now before us are entitled to indulgence upon review. See Hughes v. Rowe, 49 U.S. 5, 12-13, 101 S.Ct. 173, 177-178, 66 L.Ed. 2d 163 (1980).

If this Court does not uphold Petitioners' United States Constitutional rights their building will be torn down, they will be fined and sentenced to jail and further forced to defend their rights over and over at the whim of Apache Junction City Attorney Glenn Gimbut. The vindication

of two innocent citizens will secure the supreme law of the land or revert Petitioners back to the standards of oppression that existed prior to the United States Constitution and against the ideals and purposes of our forefathers.

For the forgoing reasons this Court should Grant the petition for a writ of certiorari to review the judgment of the Appeals Court, state of Arizona, Division Two.

Respectfully Submitted,

Robert L. Camboni

Shirley C. Camboni
1509 W. Saddle Butte
Apache Jct. Az. 85220
602-983-0163
Pro Se

Date_____

APPENDICES

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK July 29, 1994
COURT OF APPEALS DIVISION TWO

2 CA-CV 94-0055 DEPARTMENT B

PINAL County Cause No. CIV 40646

ORDER

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,

Plaintiffs/Appellants,

v.

SANDY WHITTON, TRESA McDONALD, MIKE McMILLAN, LYNN UNDERWOOD, JIM NAKAGAWA, MEL MULHOLLAND, DALLAS DEWEY, CHARLES BALZER, CITY OF APACHE JUNCTION, ARIZONA, a municipal corporation of the State of Arizona, and the APACHE JUNCTION BUILDING DEPARTMENT, jointly and severally as individuals,

Defendants/Appellees,

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,

Counterdefendants/Appellants)
)
v.)
)
CITY OF APACHE JUNCTION,)
a municipal corporation of)
the State of Arizona,)
)
Counterclaimant/Appellee.)
_____)

The above-entitled matter was duly submitted to the Court. The court has this day rendered its MEMORANDUM DECISION.

ORDERED: The MEMORANDUM DECISION be filed.

FURTHER ORDERED: A copy of this order together with a copy of the MEMORANDUM DECISION be sent to each party appearing herein or the attorney for such party and to The Hon. WILLIAM J. O'NEIL, Judge.

Dated: July 29, 1994

"S/Joyce A. Goldsmith"
Clerk of the Court

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

Filed July 29, 1994

2 CA-CV 94-0055 DEPARTMENT B

MEMORANDUM DECISION
Not for publication,Rule 28, Rules of Civil Appellate Procedure

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,

Plaintiffs/Appellants/,

v.

SANDY WHITTON, TRESA McDONALD, MIKE McMILLAN, LYNN UNDERWOOD, JIM NAKAGAWA, MEL MULHOLLAND, DALLAS DEWEY, CHARLES BALZER, CITY OF APACHE JUNCTION, ARIZONA, a municipal corporation of the State of Arizona, and the APACHE JUNCTION BUILDING DEPARTMENT, jointly and severally as individuals,

Defendants/Appellees,

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,
Counterdefendants/Appellants

v.)
)
CITY OF APACHE JUNCTION,)
a municipal corporation of)
the State of Arizona,)
)
Counterclaimant/Appellee.)
)

APPEAL FROM THE SUPERIOR COURT OF
PINAL COUNTY

Cause No. 40646

Honorable William J. O'Neil, Judge

AFFIRMED

Robert L. Camboni and Shirley C. Camboni
in Propria Persona Apache Junction

Doyle, Appel & Shook
by Yancey N. Burnett Phoenix

City of Apache Junction
by Glenn J. Gimbut Apache Junction

Attorneys for Defendants/Appellees/
Counterclaimant/Appellee

HATHAWAY, Judge.

This appeal arises from appellants' (Cambonis) refusal to comply with the city (Appellee's) building codes and abide by a "stop work order" with regard to Cambonis' commercial building. Consequently, the city served a notice and order for abatement of a dangerous

condition. Cambonis appealed the abatement order to the Apache Junction Construction Board, then withdrew their appeal, but appeared before the Board and defended their conduct on the merits. The Board upheld the order for abatement of dangerous conditions.

Cambonis filed a 12-count complaint against the City of Apache Junction and the individual defendants, alleging: (1) fraud; (2)trespass; (3)illegal search and seizure; (4)discrimination; (5) false light/deceit; (6)intentional infliction of emotional distress; (7) negligence; (8)disparagement of reputation; (9)economic duress; (10) respondeat superior; (11)libel and slander, and (12)civil racketeering.

The City filed a counterclaim against appellants requesting that the Cambonis' building be declared a dangerous building. The City's motion for partial summary judgment as to its counterclaim was granted. Cross-motions for summary judgment as to Cambonis' claims were filed and the City prevailed. The City's motion was supported by a statement of facts and documentation which Cambonis did not oppose. Judgment was entered pursuant to Ariz. R. Civ. P.54(b),16 A.R.S.

Appellants represented themselves in persona throughout a good portion of these proceedings, although they were represented by counsel for a period of time. Their briefs, pleadings and other material in the records reflect that

Cambonis' argument is principally that their building was legal in 1978 and 1979 at the time it was constructed. This is conceded to be lawful use of the property under the county zoning laws. As we best are able to discern from the record and the briefs, the primary issue on appeal is whether or not current safety codes can be appled to the existing structure. In Watanabe v. City of Phoenix, 140 Ariz. 575, 683 P.2d 1177 (App.1984), the court held that nonconforming uses at the time an ordinance becomes effective are subject to reasonable regulation under the police power to protect the public health, safety, welfare or morals. There, the court held that a municipality may use a zoning ordinance to require a validly-existing nonconforming use to change dustproofing of its parking lot from gravel to paving. Retroactive application of health and safety codes has been upheld in various jurisdictions. See McQuillen, Municipal Corporations §24.512 (3d ed.); see also, Concord Florida, Inc. v. Lewin, 341 So.2d 242 (Fla. 1976), cert. denied, 348 Do.2d 946 (Fla.1977); Wood v. City of Pittsburgh, 460 A.2d 390 (Pa.Comwith, 1983).

The summary judgment entered upon the Citys' counterclaim declared that the City was entitled to a judgment as a matter of law with regard to its counterclaim against Cambonis, thus allowing for the enforcement of the official notice and order for abatement which was the subject matter of the appeal by appellants to the Apache

Junction Construction Board. The proceedings at the appeal disclosed that the Board attempted to assist appellants, to alleviate the problem. Cambonis acknowledge that a staff member offered to assist them to correct the problem personally "on his day off." Appellants, according to the record, appeared to block every attempt to resolve the matter. Their general response to appelles and their counsel suggests a concern that there is a conspiracy to deprive them of their constitutional rights and their rights to be heard. No evidence, however, supports this theory which arises regularly in the proceeding through vituperative allegations by appellants.

We are unable to glean from the record any basis for our intervention in these proceedings. Accordingly, the judgment is affirmed. Appellees request attorney's fees, sanctions and costs under Ariz. R. Civ. App.P.25, 17B A.R.S. They point out that appellants in their "voluminous attempt at litigation...have never concerned themselves with facts, law or procedure...(and) have repeatedly and adamantly maintained positions without a legal or factual basis." They argue that appellants have repeatedly demonstrated they have little concept of the requirements under law to form a prima facie case. We agree, We find that appeal frivolous and in addition to the costs to which appellees are entitled as the prevailing parties, appellees are awarded attorney's fees as a sanction under Ariz.R. Civ.App. P.25, 17B A.R.S.,

upon compliance with Ariz. R.Civ.App. P. 21(c), 17B A.R.S.

"S/ JAMES D. HATHAWAY, Judge".
CONCURRING:
"S/ WILLIAM E. DRUKE, Chief Judge"
"S/ PHILIP G. ESPINOSA, Presiding Judge"

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK AUG. 17, 1994
COURT OF APPEALS DIVISION TWO

August 17, 1994

RE: CAMBONI v. WHITTON
2 CA-CV 94-0055

Pinal County Superior Court Cause No.
CIV 40646

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on August 17, 1994

ORDERED: Motion for Reconsideration is DENIED.

Chief Judge Druke, Presiding Judge Espinosa and Judge Hathaway participated in the determination of this matter.

JOYCE A. GOLDSMITH, Clerk

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK AUG. 25, 1994
COURT OF APPEALS DIVISION TWO

August 25, 1994

RE: CAMBONI v. WHITTON
2 CA-CV 94-0055

Pinal County Superior Court Cause No. Civ 40646

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on August 24, 1994

ORDERED: Appellees' Motion for Disposition by Opinion is DENIED. See Third & Catalina Associates v. City of Phoenix, 1 CA-CV 93-0337 (August 18, 1994).

FURTHER ORDERED: Although appellants' pleadings and briefs are inappropriate and confusing, we have, sua sponte, reconsidered our conclusion that the appeal was frivolous and find that the underlying issue presented is not frivolous. Accordingly, we strike the sanction of attorney's fees awarded against appellants under Ariz. R. Civ. App. P. 25, 17B A.R.S. in our Memorandum Decision of July 29, 1994.

Presiding Judge Espinosa, Judge Hathaway and Judge Fernandez participated in the

determination of this matter. Chief Judge Druke did not participate.

JOYCE A. GOLDSMITH, Clerk

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK AUG 30 1994 COURT OF APPEALS DIVISION TWO

August 30, 1994

RE: CAMBONI v. WHITTON
2 CA-CV 94-0055

PINAL County Superior Court Cause No. CIV 40646

The following action was taken by the Court of Appeals for the State of Arizona, Division Two, Department B on August 30, 1994

Pursuant to this Court's minute letter dated August 25, 1994, striking the sanction of attorney's fees awarded against appellants,

ORDERED: Defendants'/Appellees' Application for Award of Attorneys' Fees is DENIED.

FURTHER ORDERED: Counterclaimant/Appellee City of Apache Junction's Application for Attorneys Fees is DENIED.

FURTHER ORDERED: Defendants/Appellees are granted costs on appeal in the amount of Two Hundred Eighty-Eight and 75/100 Dollars ($288.75) by the Arizona Court of Appeals, Division Two.

FURTHER ORDERED:
Counterclaimant/Appellee City of Apache Junction is granted costs on appeal in the amount of Forty-Eight and no/100 Dollars ($48.00) by the Arizona Court of Appeals, Division Two.

Chief Judge Druke, Presiding Judge Espinosa and Judge Hathaway participated in the determination of this matter.

JOYCE A. GOLDSMITH, Clerk

NOEL K. DESSAINT
CLERK OF COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

SUPREME COURT

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329
TELEPHONE: (602) 542-9396

May 5, 1995

RE: ROBERT L. CAMBONI/SHIRLEY C. CAMBONI vs. SANDY WHITTON/TRESA McDONALD/CITY OF APACHE JUNCTION
Supreme Court No. CV-94-0044-PR
Court of Appeals No. 2 CA-Cv 94-0055
Pinal County No. CIV 40646

GREETINGS:

The following action was taken by the Supreme Cout of the State of Arizona on May 5, 1995, in regard to the above-referenced cause:

ORDERED: Appellants' Petition for Review = DENIED.

A panel composed of Vice Chief Justice Moeller, Justice Corcoran, and Justice Zlaket participated in the determination of this matter.

Record returned to Court of Appeals, Division Two, Tucson, this 5th day of May, 1995.

NOEL K. DESSAINT, Clerk

COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK June 23, 1995
COURT OF APPEALS DIVISION TWO

ORDER

2 CA-CV 94-0055 Department B

Pinal County Cause No. CIV 40646

RE: CAMBONI v. WHITTON

ORDERED: Application for stay of the issuance of a mandate is DENIED.

Chief Judge Druke and Judge Hathaway concerring.

DATED: June 23, 1995

"S/Philip G. Espinosa, Chief Judge"

Defendants'/Appellees' Application for Award of Attorneys' Fees is DENIED.

Counterclaimant/Appellee City of Apache Junction's Application for Attorneys Fees is DENIED.

Defendants/Appellees are granted costs on appeal in the amount of Two Hundred Eighty-Eight and 75/100 Dollars ($288.75) by the Arizona Court of Appeals, Division Two.

Counterclaimant/Appellee City of Apache Junction is granted costs on appeal in the amount of Forty-Eight and no/100 Dollars ($48.00) by the Arizona Court of Appeals, Division Two.

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

Filed July 29, 1994

2 CA-CV 94-0055 DEPARTMENT B

MEMORANDUM DECISION
Not for publication, Rule 28, Rules of Civil Appellate Procedure

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,

Plaintiffs/Appellants/,

v.

SANDY WHITTON, TRESA McDONALD, MIKE McMILLAN, LYNN UNDERWOOD, JIM NAKAGAWA, MEL MULHOLLAND, DALLAS DEWEY, CHARLES BALZER, CITY OF APACHE JUNCTION, ARIZONA, a municipal corporation of the State of Arizona, and the APACHE JUNCTION BUILDING DEPARTMENT, jointly and severally as individuals,

Defendants/Appellees,

ROBERT L. CAMBONI and SHIRLEY C. CAMBONI, husband and wife,
Counterdefendants/Appellants

v.)
)
CITY OF APACHE JUNCTION,)
a municipal corporation of)
the State of Arizona,)
)
Counterclaimant/Appellee.)
_____)

APPEAL FROM THE SUPERIOR COURT OF
PINAL COUNTY

Cause No. 40646

Honorable William J. O'Neil, Judge

AFFIRMED

Robert L. Camboni and Shirley C. Camboni
in Propria Persona Apache Junction

Doyle, Appel & Shook
by Yancey N. Burnett Phoenix

City of Apache Junction
by Glenn J. Gimbut Apache Junction

Attorneys for Defendants/Appellees/
Counterclaimant/Appellee

HATHAWAY, Judge.

This appeal arises from appellants' (Cambonis) refusal to comply with the city (Appellee's) building codes and abide by a "stop work order" with regard to Cambonis' commercial building. Consequently, the city served a notice and order for abatement of a dangerous

condition. Cambonis appealed the abatement order to the Apache Junction Construction Board, then withdrew their appeal, but appeared before the Board and defended their conduct on the merits. The Board upheld the order for abatement of dangerous conditions.

Cambonis filed a 12-count complaint against the City of Apache Junction and the individual defendants, alleging: (1) fraud; (2)trespass; (3)illegal search and seizure; (4)discrimination; (5) false light/deceit; (6)intentional infliction of emotional distress; (7) negligence; (8)disparagement of reputation; (9)economic duress; (10) respondeat superior; (11)libel and slander, and (12)civil racketeering.

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Appellants represented themselves in persona throughout a good portion of these proceedings, although they were represented by counsel for a period of time. Their briefs, pleadings and other material in the records reflect that

Cambonis' argument is principally that their building was legal in 1978 and 1979 at the time it was constructed. This is conceded to be lawful use of the property under the county zoning laws. As we best are able to discern from the record and the briefs, the primary issue on appeal is whether or not current safety codes can be appled to the existing structure. In Watanabe v. City of Phoenix, 140 Ariz. 575, 683 P.2d 1177 (App.1984), the court held that nonconforming uses at the time an ordinance becomes effective are subject to reasonable regulation under the police power to protect the public health, safety, welfare or morals. There, the court held that a municipality may use a zoning ordinance to require a validly-existing nonconforming use to change dustproofing of its parking lot from gravel to paving. Retroactive application of health and safety codes has been upheld in various jurisdictions. See McQuillen, Municipal Corporations §24.512 (3d ed.); see also, Concord Florida, Inc. v. Lewin, 341 So.2d 242 (Fla. 1976), cert. denied, 348 Do.2d 946 (Fla.1977); Wood v. City of Pittsburgh, 460 A.2d 390 (Pa.Comwith, 1983).

The summary judgment entered upon the Citys' counterclaim declared that the City was entitled to a judgment as a matter of law with regard to its counterclaim against Cambonis, thus allowing for the enforcement of the official notice and order for abatement which was the subject matter of the

appeal by appellants to the Apache Junction Construction Board. The proceedings at the appeal disclosed that the Board attempted to assist appellants, to alleviate the problem. Cambonis acknowledge that a staff member offered to assist them to correct the problem personally "on his day off." Appellants, according to the record, appeared to block every attempt to resolve the matter. Their general response to appelles and their counsel suggests a concern that there is a conspiracy to deprive them of their constitutional rights and their rights to be heard. No evidence, however, supports this theory which arises regularly in the proceeding through vituperative allegations by appellants.

We are unable to glean from the record any basis for our intervention in these proceedings. Accordingly, the judgment is affirmed. Appellees request attorney's fees, sanctions and costs under Ariz. R. Civ. App.P.25, 17B A.R.S. They point out that appellants in their "voluminous attempt at litigation...have never concerned themselves with facts, law or procedure...(and) have repeatedly and adamantly maintained positions without a legal or factual basis." They argue that appellants have repeatedly demonstrated they have little concept of the requirements under law to form a prima facie case. We agree, We find that appeal frivolous and in addition to the costs to which appellees are entitled as the prevailing parties, ~~appellees are awarded attorney's fees as a sanction~~

~~under Ariz.R. Civ.App. P.25, 17B A.R.S., upon compliance with Ariz. R.Civ.App. P. 21(c), 17B A.R.S.~~

STRIKEN BY ORDER 08/25/ /?/

"S/ JAMES D. HATHAWAY, Judge"

CONCURRING:

"S/ WILLIAM E. DRUKE, Chief Judge"

"S/ PHILIP G. ESPINOSA, Presiding Judge"

CITY OF APACHE JUNCTION ARIZONA
1001 N. IDAHO ROAD APACHE JUNCTION, ARIZONA TELEPHONE (602) 982-8002

City Attorney CITY OF APACHE JUNCTION

December 14, 1992

Frederick F. Taylor
ST. GEORGE, REED & TAYLOR
440 East Southern
P.O. Box 27728
Tempe, Arizona 85282-7728

RE: Camboni v. City of Apache Junction, et al

Dear Mr. Taylor:

This letter will confirm our earlier conversation wherein I indicated that if you were going to enter your Notice of Appearance I would be willing to stipulate to a short continuance of two or three weeks for oral argument on the Motion for Partial Summary Judgment.

Please be advised that your client has made his building a "mini crusade". His actions have been such as to cause a desire by the city to see this case brought to a quick conclusion.

I have no problems giving a professional courtesy extension to a new attorney so he may be able to digest the file and be in a position to give knowledgeable, professional representation. However, the Motion for Partial Summary Judgment has been pending in the court for more

than three months, and it is time to bring this matter to a close. I do not have authority for an open extension, or a long extension.

Further, this is my request, pursuant to Rule 11, that you carefully review your client's legal position. This is my request that you research the law on how one appropriately challenges municipal administrative decisions. The method of challenge is by way of a special action, and the method of challenge is based on the record. Extraneous matters do not get brought into play. De novo trials are not available. The issue is whether or not the administrative body abused its discretion. If there are any facts which exist which might uphold the decision, then the courts will not overturn the decision made.

If you read and review the complete transcript of the hearing of July 10, 1992, you will find there are ample facts in the record to support the decision made.

In your conversation, you questioned whether or not an independent structural engineer had been used. This was offered to your client on three (3) separate occasions. The first time was in writing by our then Building Official, Lynn Underwood. This request to have an outside structural engineer come in, at our expense, to evaluate the situation was refused. The second time was during the course of the July 10 hearing when Ken Sanchez, a licensed structural

engineer with over thirty (30) years experience, offered to personally evaluate the building. Mr. Camboni refused his request. The third opportunity was the decision by the Board on July 10 when they offered to Mr. Camboni an opportunity for him to either allow the Board to inspect the building or hire his own structural engineer and have that evidence presented to the Board. Mr. Camboni intentionally refused this opportunity.

Your client was given more than ample opportunity to put forward evidence in a legal and proper manner to demonstrate that his building did comply with the design load standards of the 1991 Uniform Building Code. He did not. Evidence was presented by the City that the building did not meet these standards. Your client did not contest this factual information. Indeed, the factual information utilized by the City to come to the professional conclusion was information supplied by your client. He has not been able to introduce into the record any professional conclusion to contradict the work of the Department of Development Services of the City of Apache Junction. All your clients have is the simplistic opinion that their building has not collapsed in the last thirteen years, is not in imminent danger of collapse today and, therefore, we should simply leave them alone. They have also manufactured a hypothesis that, somehow, there is a massive conspiracy against them.

It is time for this case to end. Again, pursuant to Rule 11, please research thoroughly the law as to whether or not your clients have any proper legal basis to challenge the Counterclaim. Also, this is a request for your clients to supplement and update the disclosure made pursuant to Rule 26.1. If information is attempted to be presented which is not properly disclosed pursuant to Rule 26.1, objections will be made and sanctions sought. You may also wish to look at the answer to the counterclaim given by your client.

Finally, be advised that the status of this matter is ripe for criminal citation. At this time, the City has not made a decision whether or not to pursue this aspect.

Your specific attention is called to some of the boorish behavior of your client. Sign boards in the back of his truck proclaiming City officials as being "Nazis"; pamphlets personally deriding our former Building Official and our present building inspector, as well as our City Engineer; dressing in prison garb in our parking lot; selling "secret tapes", etc., are actions which can be the subject of either protective orders or independent actions seeking a judicial order against harassment. At present time, individuals in litigation have seriously considered these kinds of actions. I do not believe it helps anyone to have this file become expanded litigation. You may wish to counsel your client about proper behavior. I believe

that Judge O'Neil would have a low tolerance level for some of the extremes of your clients' behavior. Thus far, Mr. Burnett and I have refrained from calling these matters specifically to the attention of the court, as we prefer to deal with this case at its core, rather than getting carried away. Now that your client has an attorney, you will find we will make requests of you to counsel your client in this area. While I thououghly realize there are limits to what an attorney can do to control a client, I welcome the opportunity to be able to finally have someone to whom these concerns can be communicated short of formal legal action.

Thank you very much for your time and attention. If you have any questions, or I can be of service in any manner, please do not hesitate to call.

Sincerely yours,
"S/Glenn J. Gimbut"
Glenn J. Gimbut City Attorney
GJG/ajd
cc: Michael Lee, City Manager
Kathy Connelly, City Clerk
Yancey Burnett, SURRANO & MASSEY